

REMARKS

Claims 1, 4, and 23 are pending. The reasons for rejection of the pending claims have been considered. Reconsideration of the pending claims in view of the declaration and remarks below is respectfully requested.

Withdrawn Rejections

Applicants gratefully acknowledge the withdrawal of the rejections of claims 14 and 23 under 35 U.S.C. 112, first paragraph.

The Subject Matter of the Pending Claims is Novel

The Office has rejected claims 2, 14, and 23 under 35 U.S.C. 102(e) as allegedly being anticipated by WO 2002/70539 A2, which was filed on March 5, 2002. This PCT publication claims priority to a U.S. patent application, 09/799,451, which was filed on March 5, 2001. According to the Office, the PCT application discloses Sequence Number 1397, which discloses an amino acid sequence that is the same as Applicants' SEQ ID NO: 2.

In response to this rejection, Applicants submit a declaration under 37 C.F.R. 1.131 to antedate the filing date of the cited reference. According to the declaration, Applicants were in possession of the claimed subject matter prior to the filing date of the priority document, the PCT application which is presently cited against the pending claims. In view of this, Applicants submit that they are the first to invent the claimed subject matter and, thus, the anticipatory reference cited by the Examiner has been overcome. In view of the declaration, Applicants respectfully request that the present rejection be withdrawn and the pending claims be advanced to issuance.

Double Patenting

Claims 1, 14, and 23 have been provisionally rejected under the judicially-created doctrine of obviousness type double patenting as allegedly being unpatentable over claims 1, 12-17,

19, 21, 26, 51, and 52 of copending Application No. 10/099,460. Applicants acknowledge the provisional obviousness type double patenting rejection leveled against the presently pending claims. Applicants will submit a terminal disclaimer at the appropriate time when either the present case or Application No. 10/099,460 is placed in condition for allowance.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 511582003500. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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